

What is meant by “salary”?

“Salary” is a regularly paid amount of money, constituting all or part of an employee’s wages, paid on a weekly or less frequent basis that is not subject to reduction due to the quality or quantity of work performed. This is the general definition in federal law (29 CFR 541.118). Since Wisconsin’s, overtime law does not define “salary,” and since Wisconsin’s, overtime exemptions are interpreted in a manner consistent with federal interpretation, this is the applicable definition.

Which employees can be paid on a salary basis?

Any employee can be paid on any basis – salary, hourly, commission, piece-rate, flat rate – as long as they receive minimum wage for all hours worked in the pay period, and as long as overtime is paid when required. Overtime is usually required at time and one-half the regular rate of pay for hours worked in excess of 40 in a week. There is a provision in the overtime regulations (**Chapter DWD 274, Wisconsin Administrative Code**) that “exempts” employees whose primary duty is administrative, executive, or professional work from overtime requirements. One of the requirements for each of these types of work to meet the exemption is that they are paid on a salary basis. Not all salaried employees are “exempt.” Employees must meet the definitions in the law in order to be classified as exempt. For more information on these definitions, see “**Wisconsin Hours of Work and Overtime Law**”. This is part of the Labor Standards Information Series.

Is there a limit to the number of hours that can be worked by salaried employees?

No. Employers have the right to schedule employees as they feel is necessary. If the employee is not exempt, overtime must be paid for hours worked in excess of 40 in a week. In factories and mercantile establishments employees must have at least 24 consecutive hours of rest in each calendar week, under **§103.85, Wisconsin Statutes**. The employer can require that employees work extra hours if they are necessary.

If the salary is based on working 45 hours per week, does the employer owe more money if the employee works more than 45 hours?

This depends upon the wage agreement between the employer and the employee. If the employee were exempt as an executive, administrative employee, or professional, generally no additional pay would be owed unless there is some agreement for additional pay. For non-exempt salaried employees, the employer must pay overtime if the employee works more than 40 hours. They may have to pay additional amounts if it is specified in the agreement that the salary is meant to be compensation for up to 45 hours. Contact the Equal Rights Division for additional information regarding this type of situation.

How is overtime paid for salaried employees who are not exempt from overtime requirements?

Overtime must be paid at time and one-half the regular rate of pay. The “regular rate” is an hourly rate that will change for a salaried employee based upon the number of hours worked in a week. Since salary constitutes wages at straight time for all hours worked, the employer owes an additional half time for the hours in excess of 40 in a week.

Example: A non-exempt employee is paid a salary of \$500 per week, and they work 50 hours in a given week. Since the agreement is just that the employee will be paid a \$500 salary, that sum would cover any number of hours worked. The regular rate for this week is the salary (\$500) divided by the 50 hours worked, or \$10.00. To pay overtime, the employer would divide the regular rate in half (\$10.00 divided by 2, or \$5.00), and then multiply that result by the 10 overtime hours. The overtime due for this week would be \$50. The employee’s gross wages for the week, including overtime, would be \$550 (the \$500 salary plus \$50 in overtime pay).

Can the employer deduct from salary for partial days of absence?

No. Deductions may not be made for partial days of absence, regardless of the reason.

Can the employer make deductions from salary if the employee is sick?

Yes, but only if the deduction is made in conjunction with a bona fide sick pay policy that provides payment for absences that occur because of illness or accident. If the employer has a sick pay policy, but the employee is not eligible for benefits under the policy for the first 90 days of employment, the employer may deduct for full days of absence due to illness during that first 90-day period. If the policy offers five sick days per year and the employee has used those days, deductions may be made for full days of absence due to illness after the sick pay has been used.

Can the employer prorate the employee's salary when the business is shut down for part of a week due to a holiday or for another reason? What about when the business closes for a full week?

If work is not made available to employees paid on a salary basis for part of a workweek, the employer may not reduce the week's salary. If work is not made available for an entire workweek, however, no salary needs to be paid.

Can the employer deduct for days missed due to jury duty? What about days missed due to the employee having to serve as a witness? What about days missed due to the employee having to serve temporary military leave?

An employer may not deduct from salary for absences that take place because of jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset the salary by amounts received by the employee as jury or witness fees, or as military pay. It is important to note that the employer does not have to pay any salary if the employee does not work at all in a workweek for any of these reasons.

Can the employer prorate the salary if the employee is fired during the middle of a workweek?

Yes. Salary may be prorated for actual time worked in both the initial and terminal weeks of employment.

Does an employer have to pay holiday pay in addition to salary if other employees are paid holiday pay?

No. Employers are not obligated to make benefit payments beyond the regular salary just because they do so for hourly paid personnel.

Can the employer require that employees use vacation or other leave time if they miss work or if they miss only part of a day of work?

Yes. An employer can require that employees use leave time to make up missed days, as long as the leave time is sufficient to replace what would otherwise be lost salary. This does not constitute a deduction of the salary for the week if the amount paid is the same.

Can the employer prorate the employee's salary if the employee has permanently changed from working 40 hours to working 30 hours per week?

The answer is yes, but "prorate" is not the way to refer to this change. An employer may change the salary of an employee in a situation like this. Caution is advised, because changing the salary each week might be seen as payment of hourly wages rather than meeting the definition of salary basis.

Can the employer change the method of compensation for an employee from hourly to salary and back as they see fit?

Yes. The employer may change the method of payment when it wishes, as long as the employer informs the employee prior to the performance of the work. If the employee is non-exempt, and the employer always pays overtime, this causes no particular problem. For exempt employees, there may be a problem, however. Repeated changes made simply to reduce overall wages and to avoid the payment of overtime may be viewed as not in keeping with "salary basis," and the exemption may be lost. Be careful about making frequent changes.

What record-keeping requirements apply to employees paid on a salary basis?

Employers in the State of Wisconsin must keep time and payroll records for each employee. This includes employees paid on a salary basis. The required records must include the time in and the time out on a daily

basis, the total number of hours worked per day and per week, and the time in and out for meal periods if that time is deducted from hours worked. Meal periods may be deducted from hours worked if they are at least 30 consecutive minutes in duration, and if the employee is relieved of duty and free to leave the premises during the break. Note: Wisconsin law does not require meal periods or rest periods for adult employees. Minors may not work more than six consecutive hours without receiving a meal period of 30 consecutive minutes.

For additional information about federal law, contact:

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